

THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

C.R.P.No.428 of 2005

ORDER:

This Civil Revision Petition is filed assailing the order dated 29.11.2004 in IA No.3296 of 2003 in AS (SR) No.10809 of 2003 before the learned Principal District Judge, Ranga Reddy District at L.B. Nagar.

2. This application in IA No.3296 of 2003 was filed to condone the delay of 4,051 days in filing an appeal against the judgment and preliminary decree dated 06.08.1991 in OS No.380 of 1989 on the file of the learned Principal Subordinate Judge, Ranga Reddy District at L.B. Nagar. The learned Principal District Judge has dismissed the said IA filed under Section 5 of the Limitation Act with an observation that the petitioners/appellants/defendants 1 to 6 having engaged an advocate failed to give instructions for filing the written statement, they have got knowledge of the filing of suit, as such they were set *ex parte*, but they failed to contact their advocate, after they have received notice in final decree proceedings on

18.03.2002, the present application is filed stating that they were not aware of the preliminary decree which is factually incorrect and that there are no merits in the explanation offered by the petitioners to condone the delay in filing the appeal against the judgment and decree dated 06.08.1991 in OS No.380 of 1989. Feeling aggrieved by the said order dated 29.11.2004 in IA No.3296 of 2003, the present CRP is filed.

3. Heard learned counsel for the revision petitioners. None appears on behalf of the respondents. Some additional material papers are also filed without proper notice to the other side and without any application for reception of additional material papers. Accordingly, the additional material filed along with the additional material papers index dated 09.12.2017 on 02.11.2022 are not considered.

4. The admitted/undisputed facts of the case are that the respondents/plaintiffs have filed a suit in OS No.380 of 1989 for partition and separate possession in respect of the suit schedule lands therein. The defendants

who are the revision petitioners herein have received suit summons, engaged the services of one N. Panduranga Reddy, advocate, but they failed to file the written statement, in spite of granting several adjournments, as a result, they were set *ex parte*. The prayer made by the plaintiffs was accepted, suit was decreed with costs under Order-8 Rule-10 of CPC passing preliminary decree in respect of 1/5th equal share in each of the suit schedule properties. This preliminary decree was passed on 06.08.1991. However, the defendants did not take any steps for filing an application to set aside the *ex parte* decree stated above, except filing the application in IA No.3296 of 2003 along with AS (SR) No.10809 of 2003 under Section 5 of the Limitation Act to condone the delay of 4,051 days i.e., from 05.09.1991 to 08.10.2002.

5. Be it stated that the *ex parte* decree was passed on 06.08.1991 in OS No.380 of 1989. It appears that the plaintiffs and defendants are inamdars of suit schedule properties situated at Ghatkesar village, Ranga Reddy District and they are representing five branches and

accordingly the suit was decreed as prayed for. It is not the case of petitioners/defendants 1 to 6 that they were not aware of the proceedings in the original suit in OS No.380 of 1989. From the averments in supporting affidavit and also from the orders impugned, it is crystal clear that the petitioners have engaged an advocate in the original suit, but they have failed to file the written statement. They did not pursue the matter subsequently. Once they have engaged the advocate on receipt of suit summons, any explanation offered by them stating that they were not aware of the *ex parte* decree dated 06.08.1991 in OS No.380 of 1989 is not acceptable. That apart, the parties were pursuing the other remedies before other forums, such as before the Revenue Tribunals and before the High Court and that a Writ Petition in W.P.No.27053 of 1995 was also filed before this court and in fact, a copy of preliminary decree was also filed in writ proceedings in the year 1995 itself, which indicates that way back in the year 1995 the petitioners/ defendants were aware of the preliminary decree in OS No.380 of 1989.

6. Perused the averments of the supporting affidavit filed in support of the application in IA No.3296 of 2003 wherein it is simply mentioned that the petitioners have preferred the appeal against the judgment and decree dated 06.08.1991 in OS No.380 of 1989 and that on receipt of suit summons, they have engaged the services of Sri N. Panduranga Reddy, who filed vakalat on their behalf, but they could not give instructions for filing written statement. They were under the impression that the suit lands were vested with the Government and no partition lies, besides above, the petitioners are illiterate persons. They have undergone treatment and could not file the appeal within time. They came to know about the preliminary decree only on 18.03.2002 when the final decree proceedings were initiated, as such there is delay of 4,051 days.

7. The learned counsel for the revision petitioners strenuously contends that the lands in dispute are inam lands and parties were pursuing the other remedies and accordingly there was delay in preferring the appeal against the orders in OS No.380 of 1989 dated 06.08.1991

and relied on the principles laid in **Lokraj and others Vs. Kishan Lal and others**¹ and in **Balraj Taneja and another Vs. Sunil Madan and another**².

8. Perused the principles laid in the above decision in **Lokraj's** case (supra). The Hon'ble Supreme Court dealt with the rights of inamdar, whereas in **Balraj Taneja's** case, the Apex Court while dealing with the provisions of Order-8 Rule-10 of CPC held that courts cannot blindly or mechanically pass any judgment if the written statement is not filed.

9. Be it stated that the present application is only filed under Section 5 of the Limitation Act to condone the delay of 4,051 days. The defendants 1 to 6/revision petitioners herein were aware of the proceedings in the original suit, they have engaged their counsel, who has filed vakalat, but they did not give instructions for filing written statement, they were also pursuing the litigation, proceedings before the Revenue Tribunals and also before

¹ (1995) 3 SCC 291

² (1999) 8 SCC 396

the High Court and only when a notice was issued in final decree proceedings on 18.03.2002, they have filed the present application to condone the delay of 4,051 days. It is not their case that they were not aware of suit proceedings.

10. In fact, during the year 1995 in the writ petition No.27053 of 1995 filed by the revision petitioners they have also annexed a copy of preliminary decree. Hence, the allegation of the petitioners that they have come to know about the preliminary decree only on 18.03.2002 when they received notices is not correct. At least the petitioners ought to have filed such application to condone the delay in the year 1995 itself when they have filed a copy of preliminary decree along with the Writ Petition No.27053 of 1995. But no plausible or acceptable explanation is offered by the petitioners for not taking any steps either for filing an application to set aside the *ex parte* decree dated 08.06.1991 or for filing an appeal assailing the said *ex parte* decree in the year 1995 or immediately thereafter subsequent to the filing of Writ Petition No.27053 of 1995.

11. In this context, I may refer to the principles laid in ***Esha Bhattacharjee Vs. Mg.Commit. of Raghunathpur Nafar Academy and others***³ wherein the Hon'ble Apex Court while interpreting the provisions of Section 5 of the Limitation Act regarding condonation of delay summarized the principles as follows:-

- (i) There should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
- (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.
- (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
- (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
- (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.
- (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

³ (2013) 12 SCC 649

- (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.
- (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.
- (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.
- (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.
- (xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.
- (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

12. The law consistently laid down by the Hon'ble Apex Court says that the word 'sufficient cause' must be construed liberally to meet the ends of justice without adopting pedantic approach. But, exception to this test to be applied is whether the petitioner made out a sufficient cause or not? Thus, the Court has to examine the

circumstances and if the Court satisfied that the cause shown by the petitioner is beyond his control, such cause is to be accepted as sufficient cause, which prevented the petitioner from appearing before the Court on specified date. If the Court finds that the petitioner is negligent and deliberately protracting the proceedings for one reason or the other, such person is disentitled to claim the benefit of Section 5 of the Limitation Act. Even for applying the principles laid by the Apex Court in ***Esha Bhattacharjee's*** case (supra), the petitioner did not place any cogent material before this Court or before the trial Court giving satisfactory explanation for condoning the delay.

13. On overall consideration of the entire material available on record, it is noticed that the revision petitioners/defendants did not approach the Court within reasonable time. They failed to explain the delay of 4,051 days in filing the appeal against the preliminary decree dated 06.08.1991. They have deliberately failed to file the written statement and also failed to prosecute the proceedings. In such facts and circumstances of the case,

they are not entitled for condonation of such inordinate delay of 4,051 days.

14. It is not the case of petitioners/defendants that they were unaware of the proceedings before the trial Court, the averments in supporting affidavit and the material available on record would itself indicate that the petitioners having engaged an advocate in the original suit, failed to file the written statement, allowed the proceedings to be continued and an *ex parte* decree be passed. Thereafter, in the year 1995 having filed the writ petition, and also having obtained copy of *ex parte* decree did not choose to file the appeal against the said judgment and decree till 2002, finally filed an application in IA No.3296 of 2003 to condone the inordinate delay of 4,051 days without properly explaining the delay.

15. Therefore, without looking into the merits or otherwise of the claim made by the revision petitioners in respect of suit schedule properties since the revision petitioners failed to explain the delay to the satisfaction of the Court with sufficient cause, I find no infirmities or error

committed by the Court below in dismissing the application and the order impugned does not warrant any interference by this Court.

16. In the result, the Civil Revision Petition is dismissed, confirming the order impugned dated 29.11.2004 in IA No.3296 of 2003 in AS (SR) No.10809 of 2003 on the file of the Principal District Judge, Ranga Reddy District at L.B. Nagar. However in the circumstances of the case, there shall be no order as to costs.

Miscellaneous Applications, if any pending in this civil revision petition, shall stand closed.

A. VENKATESHWARA REDDY, J.

Date: 23.11.2022
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